

November 25, 2019



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VIA EMAIL

Board of Zoning Appeals
18 Government Center Lane
Verona, VA 24482

Community Development Department
18 Government Center Lane
Verona, VA 24482

Re: Special Use Permit Application 19-60 – Superior Concrete, 100 Johnson Drive, Stuarts Draft, Riverheads District – Statement in Opposition

Dear Members of the Board and Community Development Department:

On behalf of Hershey Chocolate of Virginia and its parent company, the Hershey Company (collectively “Hershey”), we appreciate the time provided by the Board of Zoning Appeals (the “Board”) in continuing the public hearing for Application No. 19-60 (the “Application”). Application No. 19-60 requests a Special Use Permit to allow a concrete batch plant operated by Superior Concrete (“Superior Concrete”) to be located and operated on property owned by PBR Associates LLC (the “Applicant”), located at 100 Johnson Drive, Stuarts Draft in the Riverheads District (the “Superior Concrete Site”). The proposed concrete plant is directly adjacent to Hershey’s food manufacturing plant, located at 120 Harold Cook Drive, Stuarts Draft (the “Hershey Property”).

Hershey attended the October 3, 2019 public hearing and told the Board that it opposed the Application. We had little advance notice of the hearing and no direct contact from the Applicant. However, following the hearing, Hershey engaged an environmental consultant to evaluate the impacts of a concrete batching plant immediately next to Hershey’s Stuarts Draft food manufacturing plant. Hershey also retained a land use expert, and requested and reviewed materials from the Applicant. The following supplements the record and includes the environmental expert report, the land-use report, and an explanation of reasons for Hershey’s opposition to the Application. Hershey reserves the right to further supplement the record as necessary.

Hershey has been manufacturing candy at its Stuarts Draft location for over 35 years and currently employs more than 1,100 people, with an intent to hire dozens more as part of pending plans to expand operations. The Stuarts Draft location is Hershey’s second largest candy manufacturing facility in the United State and is the primary producer of peanut-related food products for Hershey’s candies, including Reese’s peanut butter cups, Reese’s Pieces, Reese’s

Shapes, and more. Hershey has invested hundreds of millions of dollars in both its Stuarts Draft plant and the local community and expects to invest more with the pending plans for expansion. The expansion is fully permitted and approved and is designated to be located on the northern edge of the Hershey Property, just south of the Applicant's proposed concrete batch plant.

The proposed concrete batch plant will have an undue adverse impact on Hershey's current and planned future operations. Hershey adheres to the most rigorous food quality and safety standards in the world. As is explained below, the proposed concrete batch plant - and the dust and other external effects it will generate - is simply not compatible with Hershey's approved use, and the Application for a Special Use Permit should be denied.

Although both concrete manufacturing and food manufacturing constitute industrial use activities, these very different activities exhibit unique characteristics and are not compatible as neighboring operations. Superior Concrete proposes to operate a concrete batching plant that would involve materials deliveries, open material storage and batch plant processes generating significant fugitive dust and particulate emissions. Concrete batch plants are known sources of particulate emissions which typically contain arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, selenium, zinc, and crystalline silica. These types of emissions simply are not compatible with Hershey's existing use involving high-quality food manufacturing.

Augusta County has delegated the power to grant or deny Special Use Permits to the Board of Zoning Appeals. See August County Zoning Ordinance §§ 25-584-85.

Special Use Permit applications require "each site to be examined by public officials, guided by standards set forth in the ordinance, for the impact the use will have if carried out on that site" and "such permission is to be granted subject to such limitations and conditions as public officials may impose in order to reduce the impact of the use on neighboring properties and the public to the level which would be caused by those uses permitted as a matter of right." *Board of Sup'rs of Fairfax County v. Southland Corp.*, 224 Va. 514 (1982) (citing *Bell v. City of Charlottesville*, 297 S.E.2d 810 (1982)).

The Augusta County Zoning Ordinance (the "Zoning Ordinance") provides that a concrete batching plant located within a General Industrial District may only be permitted by a Special Use Permit if it satisfies certain requirements generally applicable to all special uses as well as certain requirements specific to batching plant uses. Zoning Ordinance § 25-384. In particular, these requirements provide as follows:

- (1) A use proposed within a General Industrial District requiring the issuance of a Special Use Permit must conform to the Augusta County Comprehensive Plan, including to specific elements of the Comprehensive Plan and to official policies adopted in relation to the Comprehensive Plan. Zoning Ordinance § 25-384(A)(1).
- (2) A use proposed within a General Industrial District requiring the issuance of a Special Use Permit must not have undue adverse impact on the surrounding neighborhood. Zoning Ordinance § 25-384(A)(2).
- (3) The Zoning Ordinance provides that a proposed use as a concrete batching plant within a General Industrial District requiring the issuance of a Special Use Permit must not

adversely impact a neighboring area characterized by residential, commercial or industrial development. Zoning Ordinance § 25-384(E)(1).

- (4) A proposed use as a concrete batching plant within a General Industrial District requiring the issuance of a Special Use Permit must not generate traffic incompatible with the roads serving the site and with the other traffic utilizing these roads. Zoning Ordinance § 25-384(E)(2).
- (5) A proposed use as a concrete batching plant within a General Industrial District requiring the issuance of a Special Use Permit must provide that all buildings, structures, and operations will be set back at least one hundred feet (100') from all property lines unless this Board determines that greater setbacks are necessary to adequately protect neighboring properties. Zoning Ordinance § 25-384(E)(4).

As discussed below, Superior Concrete's proposed use fails to satisfy these requirements. Additionally, the Application is not complete. Accordingly, the Application should be denied.

1. Superior Concrete's proposal fails to conform to the Augusta County Comprehensive Plan.

The Zoning Ordinance provides that the proposed use requires the issuance of a Special Use Permit and must conform to the Augusta County Comprehensive Plan (the "Comprehensive Plan"), including to specific elements of the Comprehensive Plan and to official policies adopted in relation to the Comprehensive Plan. Zoning Ordinance § 25-384(A)(1).

As described in the Land Use Report by Stephen Varga, AIAP (the "Land Use Report"), attached at **Exhibit A**, the operation of a concrete batch plant immediately adjacent to Hershey does not conform with multiple key policies in the Comprehensive Plan because such use is not compatible and directly conflicts with Hershey's operation of a food production facility with more than 1,100 employees.

Importantly, the Comprehensive Plan encourages the retention and promotion of existing businesses and industries and seeks to create a balanced industry base by ensuring that *new industrial businesses are compatible with those already in existence*. See Augusta County Comprehensive Plan, Chapter Three, Section C.

The Land Use Report identifies that the Comprehensive Plan's "Goal 1" of its "Economy" section, which calls for the need to promote business retention, is in conflict with this Application. Denial of the Application would properly achieve Goal 1, Objective A to "retain and expand the business and industrial operations currently located in the county" and that the "primary focus of economic development efforts should be to retain the county's existing employers and facilitate their growth and expansion." Objective B of Goal 1 is to create a "balanced industry base" by attracting businesses and industries that compatible with and enhance the county's economic climate as well as its environmental, scenic, agricultural, and historic character. The requested use of a concrete batch plant is at odds with the goals, objectives, and strategies of the Comprehensive Plan. In sum, to be in conformity with the Comprehensive Plan, a proposed use must enhance and

encourage the retention of Hershey, an existing business, and be compatible with its neighboring uses.

The authorization of a Special Use Permit for a concrete batching plant that emits pollutant particulates into the air adjacent to Hershey is contradictory to retaining Hershey as an existing employer. The Application is at odds with the health, welfare and stimulation of Hershey as an existing business and employer of over 1,100 employees, the Hershey Property, and the integrity of the food products at Hershey's Stuart's Draft facility. The Application would pose a serious threat to the existing industry base. Importantly, the proposed Superior Concrete plant is not a compatible industrial business with its adjacent neighbor, Hershey, who has been in operation for over 35 years at its location and invested millions in the local economy and educational facilities. We respectfully submit that approval of the Special Use Permit would clearly not be complementary with the existing Hershey use.

Accordingly, a proposal for a concrete batching plant does not conform with the Comprehensive Plan. In fact, the Comprehensive Plan supports denial of the Application.

2. Superior Concrete's proposal would have undue adverse impact on the surrounding neighborhood.

The Zoning Ordinance provides that a use proposed within a General Industrial District requiring the issuance of a Special Use Permit must not have undue adverse impact on the surrounding neighborhood. Zoning Ordinance § 25-384(A)(2). The proposed use would have an undue adverse impact on the overall surrounding community and particularly the ongoing use of the neighboring property as a food manufacturing facility.

a. Hazardous Material

Superior Concrete's operations will include a number of hazardous materials whose dust pose danger to Hershey's operations and the health and safety of its employees and the surrounding area. According to the safety data sheets supplied to Hershey by the Applicant, attached at **Exhibit B**, the following will be used by Superior Concrete: calcium chloride, concrete surface retarders, Slag, limestone, granite, Portland cement, Penetron Admix, Plastocrete 161 HE, Ready Mix Concrete, sand and gravel, Sika ViscoFlow-2020, Sika AEA-14, Sika ViscoCrete-2100, SikaSet NC, SikaTard 440, and ProAsh (Bituminous Coal Fly Ash).

The safety data sheets for all the materials listed above (except for the Sika materials), state that these ingredients cause skin and eye irritation and are harmful when ingested or inhaled as dust. When inhaled as dust, the ingredients in Ready-Mix Concrete, Slag, and ProAsh dust cause cancer, autoimmune disorders, and major respiratory tract damage. *See* Slag and ProAsh safety data sheets at **Exhibit B**, pages B051-58, B002-017, and B022 -031, respectively. Further, sand and gravel dust can cause lung cancer when reduced to their crystalline silica form. *See* Sand and Gravel safety data sheets at **Exhibit B**, pages B059-066.

Due to the dangers inherent in these materials, failures in Superior Concrete's environmental controls would substantially increase the risk to Hershey and surrounding properties of being contaminated by these harmful dust and particulates. Further, once the harmful dust has

been dispersed, the damage is done and a failure to control these hazardous materials could be devastating to the health of people in the surrounding area.

Superior Concrete's expert testified that the new plant will be designed to meet the highest safety and environmental standards, which will allow it to control all fugitive and process dust. See SC JK Environmental Impact PowerPoint. However, while the new plant may be designed to these standards, there is no guarantee that its operation will adhere to those standards on an ongoing basis.

Even "award winning" plants produce copious amounts of harmful dust once in operation. While Superior Concrete's expert presented pictures of his "award-winning" concrete designs to show how clean the operations of the Applicant's proposed plant would be, these images are grossly misleading. As the more current Google Earth images from 2019 in the PowerPoint slides attached at Exhibit C show, all of these "award-winning" plants appear to have a substantial amount of concrete and aggregate dust accumulation at their sites, as well as fugitive dust being tracked out and carried out by trucks to the roads surrounding the plants.

The ingredients in concrete dust, particularly Slag and ProAsh, are dangerous and especially harmful when inhaled. Thus, any spread in the dust of these hazardous ingredients will have an undue adverse impact and is absolutely unacceptable. Plainly, the use is not compatible with Hershey's food manufacturing plant.

b. Expert Report Shows Undue Adverse Impacts

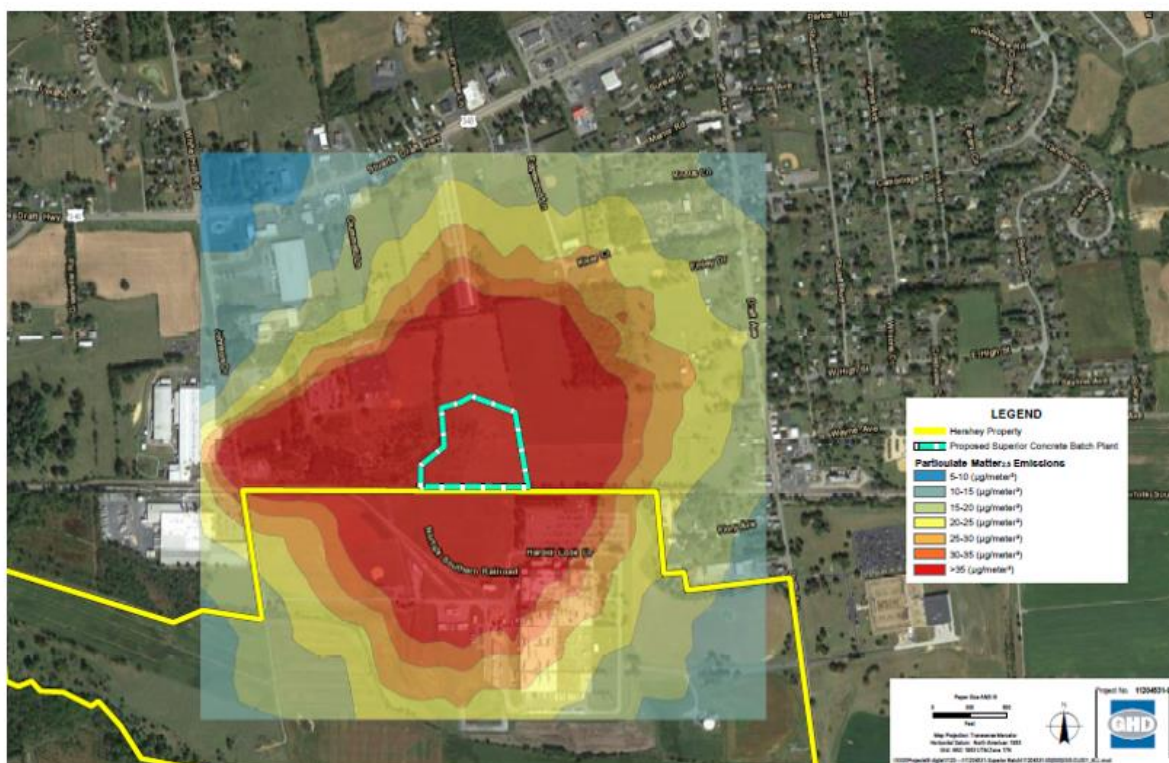
To better understand the impact of Superior Concrete's proposed concrete batching plant, Hershey retained GHD Services, Inc. ("GHD"). GHD's team of environmental experts evaluated the environmental impacts to Hershey's facility and provided an environmental analysis of the proposed concrete batch plant, regulatory compliance, air quality, odor and noise impacts on the Hershey use. GHD investigated the environmental compliance history of Superior Concrete's existing concrete batch plants to better understand their business practices and used the data supplied by the Applicant, as well as industry-standard data, to model the impacts from the concrete batch plant's proposed operations on air quality. GHD's detailed report (the "Environmental Report") is attached at Exhibit D.

The Environmental Report found that levels of nanoparticles, PM_{2.5} and PM₁₀ would be increased by the proposed concrete batch plant. The GHD air quality analysis is based upon the standards of the Clean Air Act of 1990, which requires the U.S. Environmental Protection Agency ("EPA") to set National Ambient Air Quality Standards ("NAAQS") (40 C.F.R. Part 50) for pollutants considered "harmful to public health and the environment." Both PM_{2.5} and PM₁₀ are "criteria pollutants" regulated under this law. Further, as noted in the Environmental Report, nanoparticles are tiny particles between 1 and 100 nanometers in size that enter the body through the lungs and can cause health-related issues to respiratory and heart systems.

The EPA establishes that PM_{2.5} and PM₁₀ cause "premature death in people with heart and lung disease, heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty

breathing.”¹ The health risks increase for sensitive populations, such as those with heart or lung disease or older adults. This is plainly an undue adverse impact on the Hershey Plant’s 1,100 employees.

Figure 2.3.1 PM_{2.5} Uncontrolled Emissions – Maximum 24-Hour Impact



Environmental Report Figure 2.3.1

¹ <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>

² As the Environmental Report notes, the EPA standard is 35 ug/m3 for ambient air quality. *Id.*

These harmful pollutants pose undue adverse impacts and danger to Hershey's operations and the health of its 1,100 employees. The substantial increase in harmful emissions from both the controlled and uncontrolled proposed concrete plant operations exceed the NAAQS outside and inside Hershey's food manufacturing plant and will adversely impact both Hershey's operations and the health of its employees, as well as the surrounding area. Hershey employees take breaks outside, commonly picnic outside on their lunch hour, and walk to and from their cars in the parking lot. Further, as shown at the photos attached at **Exhibit E**, Hershey holds events for their employees outside the facility and the community uses the baseball fields immediately south of the proposed concrete plant. Thus, the increase in harmful particulates poses an unacceptable risk to the health of Hershey's employees and the community.

Even if the concrete plant was moved 500 feet north, hazardous levels of emissions would still reach the Hershey Property. The hazardous materials, risk of environmental controls failure, and increased particulates associated with the proposed concrete batching plant are completely unsuitable in their proposed location next to a food manufacturing facility. Hershey's approved expansion of its plant and investment in the area conflict with the Board's potential approval of an unharmonious use next door.

In sum, the Environmental Report shows the concrete batch plant will have undue adverse impacts on Hershey and the surrounding neighborhood and it is clear these abutting uses are not compatible. Plainly, the Applicant's proposed location for Superior Concrete's plant does not satisfy the legal standard of a special use permit to locate and operate a concrete batch plant at the proposed location. Hershey is supportive of development at the property but not this Special Use Permit.

3. Superior Concrete's proposal would adversely impact the neighboring industrial development.

The Zoning Ordinance provides that a proposed use as a concrete batching plant within a General Industrial District requiring the issuance of a Special Use Permit must not adversely impact a neighboring area characterized by residential, commercial or industrial development. Zoning Ordinance § 25-384(E)(1). This requirement, which is specific to concrete batching plant proposals, is very similar to the general requirement discussed directly above. Accordingly, Hershey again maintains the proposed use would adversely impact the neighboring Hershey facility because (a) the proposed use is incompatible with the ongoing use of the neighboring property as a food manufacturing facility and (b) the proposed use, if allowed, would require Hershey to invest significant funds to control air pollution caused by the concrete batching plant.

As stated above, the danger of toxic dust from hazardous materials and the increase in harmful particulates from the proposed concrete batch plant will have a significant adverse impact on the Hershey Property, Hershey food manufacturing operations and Hershey's employees, as well as the neighboring area. As summarized above, GHD's models showed that levels of EPA criteria pollutants, specifically, nanoparticles, PM_{2.5} and PM₁₀ would be increased by the proposed concrete plant at levels exceeding NAAQS. Hazardous dust and toxic particulates are completely contrary and incompatible with the health and safety standards involved with food production.

The Environmental Report also modelled the impacts of the proposed concrete plant inside the Hershey facility. As shown on figures 3.1 -3.4 in Attachment D of the Environmental Report, GHD found that operations at the Superior Concrete Site would increase the harmful PM₁₀ particulates and nanoparticles of indoor air concentrations to an unacceptable environmental hazardous level.

Based on its models, GHD estimates that the increased frequency and cost for Hershey to attempt to mitigate the increased particulate emitted by even the controlled operations of Superior Concrete will be millions of dollars. This substantial financial impact includes, but is not limited to, down time and additional labor, material, and man hours in Hershey's operations required to change filters more frequently. Importantly, the increased filtration measures inside the Hershey facility will not be able to completely address the pollutants from Superior Concrete's operations. Further, this cost does not take into account any additional measures that Hershey would need to take to protect the air quality in its facility should Superior Concrete's environmental controls fail. Moreover, environmental standards continue to get stricter, not more lenient. Thus, the cost to Hershey will likely only increase over time. Additionally, air filtration inside the Hershey facility may partially mitigate conditions inside but would do nothing to address harmful amounts of particulates reaching the Hershey Property, as described above.

Given the proximity of the proposed concrete plant to the Hershey Property and the significant adverse impacts on public health and wellness, these uses should not be permitted to co-exist. The Application should be denied.

4. Superior Concrete has not provided evidence that its proposed use would not generate traffic incompatible with the roads serving the site and with the other traffic utilizing these roads.

The Zoning Ordinance provides that a proposed use as a concrete batching plant within a General Industrial District requiring the issuance of a Special Use Permit must not generate traffic incompatible with the roads serving the site and with the other traffic utilizing these roads. Zoning Ordinance § 25-384(E)(2).

Superior Concrete has not shown that the increased traffic generated by the concrete batching plant will be compatible with the roads serving the site and other traffic. Without a traffic study, there is no way to assess the impact of additional and heavy trucks on the roads serving the site, as well as the potential dust pollution from the trucks carrying materials to the concrete batch plant.

The Applicant claimed the new road would exceed VDOT standards and be more than adequate to meet the needs of the truck traffic in and out of the proposed plant. But, the adequacy of the road for up to 300 trips in and 300 trips out per day has not been proven by a traffic expert. Nor has the Applicant documented a consistent number of truck deliveries of aggregate and cementitious materials and mixer trucks picking up and transporting the concrete from the site. Analysis of impact is challenging when consistent facts are lacking from the record.

5. Superior Concrete's proposal does not incorporate set back at least one hundred feet (100') from all property lines.

The Zoning Ordinance provides that a proposed use as a concrete batching plant within a General Industrial District requiring the issuance of a Special Use Permit must provide that all buildings, structures, and operations will be set back at least one hundred feet (100') from all property lines unless this Board determines that greater setbacks are necessary to adequately protect neighboring properties. Zoning Ordinance § 25-384(E)(4). Not only does the Zoning Ordinance establish a minimum 100' setback for a concrete batching plant, but it specifically recognizes that this Board may determine a greater setback is necessary to protect neighboring properties. Incredibly, under the circumstance, Superior Concrete is requesting a *reduction* in the setback requirement.

Based on the models in the Environmental Report, even a setback of 500 feet from the Hershey Property would not have a net-zero impact on Hershey's employees and operations. It is clear that Superior Concrete cannot provide an adequate buffer at the proposed location. Currently, the Superior Concrete Site at 100 Johnson Drive is an unimproved vacant property which creates no adverse impacts to Hershey. The Application, no matter the proposed zero buffer or a greater setback if contemplated, would be sufficient, and the proposed use creates unacceptable and incompatible risk and adverse impact to Hershey's food production and the health of its 1,100 employees. Accordingly, this proposed Application is simply not acceptable.

6. The Application is deficient in a number of material respects.

The Application is incomplete and misleading and cannot be approved.

First, the information presented at the October 3, 2019 hearing was conceptual, vague, and contained misleading images. Indeed, the Hershey Plant was not even shown on the Applicant's site plan and conceptual plans. Not only did the Application completely omit Hershey's facility, there was no mention of Hershey's close proximity to the proposed concrete batch plant. The plans submitted contain no dimensions or scale to determine accurate size and location. Furthermore, it was not until questions were asked by the Board during the October 3, 2019 hearing that the Applicant noted Hershey's proximity, and even then, the Applicant understated the closeness, stating that Hershey would be "1100-1500 feet" from the proposed concrete plant. *See* October 3 BZA Hearing Minutes, at 105. While it is difficult to measure exactly how far Hershey's facility will be from the proposed concrete plant due to the vague site plan in the Application, it appears Hershey's expansion will actually be approximately 500 feet or less from the proposed concrete batching plant.

Between October 3, 2019 and October 22, 2019, the Applicant delivered supplemental materials to Hershey providing added detail about their operations and the safety data of concrete ingredients (collectively "Applicant's Supplemental Materials"), attached hereto at **Exhibit B**. While the Applicant's Supplemental Materials provided more detail about their potential operations and the materials to be used, the information in the record remains substantively lacking. Specifically, the Application fails to provide the critical information below:

- The Application lacks comprehensive site and design plans showing dimensions and specific locations of equipment and operations.
- The Application does not include a traffic study.
- The Application lacks plans showing the installation of industrial air monitoring systems, warning devices, and/or automatic shut-off controls.
- Filter specifications were provided in the Applicant's Supplemental Materials but no plans were provided detailing filtration management and how frequently the dust filters would be changed or cleaned.
- The Application makes promises about environmental management but lacks a specific environmental management system and a schedule for environmental site audits.
- The Application lacks information about how Superior Concrete will prevent wind erosion of the concrete and aggregate materials that will be transported to the area by truck and dumped in storage piles. These piles will be open to the air and wind erosion allowing fugitive dust and particulates to easily blow onto the Hershey Property.
- The Application does not show any kind of plant buffering, fencing, or monitoring plan to ensure measures will be taken to prevent emissions and fugitive dust.
- The Application lacks a comprehensive operation dust mitigation plan. Superior Concrete promises to keep materials wet and clean off equipment and trucks but includes no information about other possible dust mitigation measures, such as chemical dust suppressants.
- The Application fails to provide cutoff or safeguard plans should there be any water failures or operational failures directly implicating environmental controls.
- The Application omits any information about Superior Concrete's environmental compliance history at their other Virginia locations.

As shown above, the Application thus far contains no substantive environmental control plans or preventative measures. If there is a failure in the plant's filtration systems or other environmental controls, such as keeping the materials wet, there will be extreme adverse impacts on the health and safety of Hershey's employees and operations by a 365% increase in emissions. These documented adverse impacts are based on conservative weather patterns and emissions may be even more significant given the windy conditions of Stuart's Draft.

Interestingly, as detailed in the Environmental Report, Superior Concrete has a past history of non-compliance at its existing concrete batch plants, which may be the reason this information was not included in the Application. The evidence is substantial to show Superior Concrete historically disregards state environmental standards and, with no substantive plan in the record,

there is every reason to believe that the proposed Superior Concrete plant will not operate with sufficient controls, thus substantially increasing the adverse impacts on Hershey. The best predictor of future behavior is past behavior, and even the best designs are only as good as their operators. In this case, Superior Concrete's past behavior is cause for concern.

Hershey is one of the key sources of jobs and economic growth in the area. These concerns cannot be taken lightly as the proposed use threatens the health and safety and economic well-being of Hershey and its employees.

Plainly, the Application lacks substantial evidence to meet the legal burden to obtain approval for the special use permit. There is no reliable evidence that Superior Concrete will operate with consistent environmental controls, nor that any level of controls would reduce the high level of harmful dust and particulates that will reach the Hershey Property. Rather, the only evidence in the record establishes that the concrete plant will have an undue adverse impact on the Hershey Plant and would not be compatible. This Application should be denied. Doing otherwise unduly increases the risks of dangerous dust from the concrete materials dispersing toward Hershey's food manufacturing facility and risking the health of Hershey's operations, its employees, and the neighboring area.

7. Conclusion

As a food manufacturing company, Hershey follows the most rigorous food-quality and food-safety processes in the world. Therefore, an operation using and storing hazardous materials, emitting harmful particulates, and having a historic disregard for environmental compliance, poses an unacceptable risk to the health and safety of Hershey's 1,100 employees and the food manufactured by Hershey at this site.

This Application for Superior Concrete's operation of a concrete batching plant at 100 Johnson Drive does not meet the standard set forth in Zoning Ordinance § 25-384 because it is not compatible with Hershey's food and candy production, it does not conform with the Comprehensive Plan and it will have significant and dangerous adverse impacts on Hershey's employees, food products, and operations.

Based on the above, Hershey respectfully request that the Board deny Special Use Permit Application No. 19-60. We look forward to attending the hearing on December 5, 2019.

Sincerely,

COZEN O'CONNOR



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